

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

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Gerald Ubel,

Plaintiff,

vs.

REPORT AND RECOMMENDATION

Prudential Financial Insurance
Company of America,

Defendant.

Civ. No. 08-4407 (JMR/RLE)

* * * * *

This matter came before the undersigned United States Magistrate Judge upon a routine supervision of cases filed in this Division, and upon an assignment made in accordance with Title 28 U.S.C. §636(b)(1)(B).

The action was commenced on July 3, 2008, by the filing of a Complaint with the Clerk of Court. On November 10, 2008, it having appeared that one hundred and twenty (120) days had passed and the Defendant had not been served with the Complaint and Summons as required by Rule 4(m), Federal Rules of Civil Procedure, this Court issued an Order, which stated as follows:

That the Plaintiff is directed to show good cause, in writing, within twenty (20) days of the date of this Order, for an extension of time in which service can be effectuated. In

the absence of good cause shown, the Court shall Recommend that this action be dismissed for failure to effect proper service on the Defendant, and for failure of prosecution.

The Plaintiff has failed to abide by the terms of our Order of November 10, 2008.

Since we have previously warned the Plaintiff of the potential consequences for his failure to timely serve the Defendant, and to abide by the Orders of this Court, we recommend that this action be dismissed, for failure to comply with this Court's Order of November 10, 2008, for failure to effect proper service on the Defendant, and for lack of prosecution.

NOW, THEREFORE, It is --

RECOMMENDED:

That this action be dismissed for failure to comply with this Court's Order of November 10, 2008, for failure to effect proper service on the Defendant, and for lack of prosecution.

BY THE COURT:

Dated: December 8, 2008

s/ Raymond L. Erickson

Raymond L. Erickson
CHIEF U.S. MAGISTRATE JUDGE

NOTICE

Pursuant to Rule 6(a), Federal Rules of Civil Procedure, D. Minn. LR1.1(f), and D. Minn. LR72.2(b), any party may object to this Report and Recommendation by filing with the Clerk of Court, and by serving upon all parties **by no later than December 29, 2008**, a writing which specifically identifies those portions of the Report to which objections are made and the bases of those objections. Failure to comply with this procedure shall operate as a forfeiture of the objecting party's right to seek review in the Court of Appeals.

If the consideration of the objections requires a review of a transcript of a Hearing, then the party making the objections shall timely order and file a complete transcript of that Hearing **by no later than December 29, 2008**, unless all interested parties stipulate that the District Court is not required by Title 28 U.S.C. §636 to review the transcript in order to resolve all of the objections made.